Quid Novi

McGill University, Faculty of Law
Volume 25, no. 23 - March 29, 2005

FINAL ISSUE OF 2004-2005

In This Issue...

QUID NOVI
3661 Peel Street
Montréal, Québec H2A 1X1
(514) 398-4430

quid.law@mcgill.ca
http://www.law.mcgill.ca/quid

The *Quid Novi* is published weekly by the students of the Faculty of Law at McGill University. Production is made possible through the direct support of students.

Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca

Toute contribution doit indiquer l'auteur et son origine et n'est publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction telle que décrite à l'adresse:
http://www.law.mcgill.ca/quid/edpolicy.html.

Contributions should preferably be submitted as a .doc attachment. All anonymous submissions will be rejected.

Week in Review...

Hot Off the Press! Well, not quite, but every law student should read **Professor Blackett's October 2004 Report on Student Evaluation**; the report was recently sent to every law student via e-mail, and will be posted on the Quid Novi website. I won't go into the Report in detail here (see John Haffner's in-depth response on page 24 of this issue), but I do suggest that readers of the Report keep three questions in mind: (1) what is the relationship between programme financing and pedagogical reform? (2) what is the relationship between the law school's mission and the recruitment needs of law firms, other employers of law graduates, and graduate programmes? - can the two be balanced, even if uneasily? And (3) what are the responsibilities of professors and students when it comes to improving the quality of legal education?

In other news, the U.S. Senate subpoenaed Terri Schiavo, a woman who has been in a persistent vegetative state since 1991, to testify before the Health, Education, and Labor Committee. The subpoena was intended to make it impossible for Schiavo to be taken off the feeding tube that allows her to survive; the order, however, was defied by a Florida judge, and the feeding tube was removed. Schiavo then began to die of dehydration. Police in Florida arrested a five-year-old girl at her kindergarten, binding her hands with plastic ties and placing handcuffs around her ankles. The girl, who weighs forty pounds, was upset about some jelly beans. "They set my baby up," said her mother. Alan Greenspan related that when he needs inspiration prior to giving a speech, he turns on a large fan, strips naked, and takes a nice hot bath.

Police in York, Pennsylvania, arrested a fifty-three-year-old serial sheep molester in a barn. The man said he was just petting the sheep, even though it was 3 A.M., it was not his barn, and he had baler's twine in his back pocket, which can be used to bind sheep. People were selling their bodies to advertisers as display space. Bernard Ebbers, the former chief executive of WorldCom, was convicted of securities fraud, conspiracy, and seven counts of filing false reports. Martha Stewart was finding her ankle bracelet to be both "uncomfortable and irritating." China took steps to prevent an invasion of red ants. A Wisconsin woman rammed her car into a Catholic church after deciding that God does not exist; her car was destroyed, but the church was unharmed.

J.M.

The Court of Shakespeare: The Case of "The Bard de La Mer"

by Jason MacLean (Law II)

I. FACTS:

It began as a beautiful day on the beach. Three close friends - Gabriel Pedersen, Jean du Parcq, and Chris Vidaloca - were vacationing on a secluded maritime reserve. After a few shared beers, Jean importuned Gabriel, an experienced sailor, to go for a little jaunt in Gabriel's boat, "The Bard de la Mer." Chris, meanwhile, chose not to join her friends but to lay alone on shore, ostensibly out of a fear of sharks.

The temper of the day soon changed. Out at sea, Gabriel continued drinking heavily. Within a couple of hours, Gabriel had become extremely inebriated and Jean seriously concerned. Jean wrested control of Gabriel's boat and turned it toward shore, whereupon a heated argument broke out, as is wont to happen between close friends even at the best of times; in the course of the impassioned argument, Gabriel, no longer in his right mind, struck Jean violently. Jean fell over board, and Gabriel suddenly collapsed insensibly into the bottom of his boat. Jean, who was now bleeding profusely and unable to reach the boat, began to signal frantically to her friend Chris on shore. Chris, who saw everything, did nothing.

After a lengthy period of time, another boat happened by and rescued Jean from imminent death. Sadly, the rescue arrived too late to save Jean from permanent brain damage; Jean now requires round-the-clock institutional care.

Gabriel was put on criminal trial by way of a private prosecution and was found not legally responsible for his actions. In a parallel action for civil negligence, Gabriel's maritime insurance company sought to join Ms. Vidaloca as a second defendant. The trial court of first instance held, however, that neither the common law nor the civil law of Quebec imposes a duty of rescue in the case at bar. The plaintiff succeeded against Gabriel, and damages of $2.5 million were awarded.

An appeal from each of these judgments was brought to the Court of Shakespeare and by special leave consolidated into a single record. The respondent, Jean du Parcq (by her guardians), seeks a declaration from the Court holding Gabriel criminally responsible for his actions and a judgment affirming the trial judge's determination of civil liability. The applicant, Gabriel Pedersen (subsumed by HR&G Insurance Group), seeks a declaration affirming Gabriel's lack of legal responsibility for his actions and a judgment holding Ms. Vidaloca jointly and severally liable for breaching a duty of care to Jean.

II. PLEADINGS:

On Thursday, 24 March 2005, the Court of Shakespeare convened to hear three separate series of pleadings regarding the case of "The Bard de la Mer," the third case in the Court's short but already noteworthy history.[1] In the first trial, Erika Kurt (Law II) and Matt Frassica (English) crossed swords with Sylvia Rich (law II) and Myra Wright; in the second, Christine Stecura (law III) and Amanda Cockburn (English) matched wits against Jason MacLean (Law II) and Lisa Stokes-King (English); in the final trial, Sydney Thompson (Law III) and Laura Moth (English) faced Emma Blanchard (Law III) and Hilary Elkins (English).

Joining the resident members of the bench of the Court of Shakespeare, Manderson J. (Law) and Yachnin J. (English), were Constance Jordan, Professor of English, Claremont Graduate University, Claremont, California (trial one), Peter Goodrich, Professor of Law, Benjamin N. Cardozo School of Law, New York, author of Legal Discourse and "Law and the Courts of Love" (trial 2), and Richard Strier, Professor of English and Frank L. Sulzberger Professor of Civilizations in the College, University of Chicago (trial 3). Each of the invited judges sat with Justices Manderson and Yachnin for one of the three trials.

Although the results of the day's dramatic pleadings do not technically bind the ultimate decisions, let alone the reasons for those decisions, they are nonetheless highly suggestive of the Court's likely disposition. In the first trial, a majority of the Court reversed the lower court's determination of legal responsibility for Gabriel (with Jordan J. dissenting forcefully) while a unanimous Court upheld the lower court's refusal to extend a duty of care to Ms. Vidaloca. In the second trial, a unanimous Court decided to uphold the finding of Gabriel's legal responsibility and reverse the lower court's finding with respect to the duty of rescue, arguing that Ms. Vidaloca had a "degree of responsibility." In the third trial, a majority of the Court found that Gabriel was not legally responsible for his actions (with Manderson J. dissenting) while a unanimous Court found Ms. Vidaloca legally responsible for breaching a duty of care toward Jean du Parcq. Based on the foregoing, it would appear that a majority of the Court will in the coming months vote to exculpate Gabriel and inculpate Ms. Vidaloca; in the latter disposition, the reasons may well be unanimous; in the former disposition, however, it is quite likely that concurrent judgments will be issued and that Jordan J. will reiterate her strong dissent.[2]

III. SHAKESPEARE AS LAW?

How does the Shakespeare Moot Project work? Many have asked me this question throughout the semester, and invariably people answer the question for me - it must be hard. Quite right. A former Jesuit high school teacher of United States Supreme Court justice Antonin Scalia once responded to another student's criticism of Hamlet by thundering, "Mister, when I teach Shakespeare, he's not on trial, you are!" The teacher's remark stuck with Scalia as a good way of thinking about law. It strikes me as a good way of thinking about making arguments before the Court of Shakespeare.

The Court's jurisprudence on interpretation stands in stark contrast to the doctrine of originalism championed by the Reagan administration and adopted (opportunistically?) by Scalia, however, an approach that often leads to absurd results (recall that Justice Hugo Black objected to bussing because he could not find the word bus in the constitution). The Court of Shakespeare, by contrast, has adopted the "living tree" approach to the interpretation of Shakespeare's texts, which make up the exclusive codex, institutes, and digest of the Court. This approach, however, is not - at least not to my mind, or what is left of it after Thursday's pleading - simply synonymous with Justice Brennan's understanding of the living constitution approach, which posits that "the genius of the constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems." This understanding appears to offer a promise of applicability, of resolution, that is simply unavailable from Shakespeare. Justice Cardozo's remark in 1921 is closer to the mark: "The method of free decision sees through the transitory particulars and reaches what is permanent behind them." What is permanent about Shakespeare and the laws that may be derived from his works is the challenge he presents to us. *(contin. page 22)*

How Dancing Empowered Me

by Carol Gagné (Law III and Skit Night dancer)

I am not a dancer. Well, I'm not a trained dancer, anyway. In my mind, I have visions of myself as a dancer and for one night (Skit Night) I felt like a dancer. You know what? It felt good. People told me that I looked good doing it and that they didn't know that I knew how to dance. If I danced well, it is because a wonderful woman (Amélie Guilbault) choreographed a great dance and helped me learn it. But it felt great to receive the compliments and I am eternally grateful to Amélie for giving me the chance to perform.

Why is that empowering? Because it is evidence to me that I have multiple skills. My C.V. is already full of proof of my academic and occupational skills; I am comfortable with what I can do on that front. But being able to use my body as part of art is something I did not know I could do. I took a chance, knowing that I might fall on my face, and I succeeded in being part of something along with seven other women who I enjoyed working with greatly. More than anything else, it was a great experience to do something that had nothing to do with law. I had fun.

I was also in a video as a stenographer, and that was fun too. Why was I the stenographer instead of another role? Because Adrian asked me to be. Jon made a good judge in his bathrobe, Howie did a great surprised face, Dave is a good criminal, and I enjoyed having Adrian lift me over his head.

I take exception with people who say I contributed to a sexist Skit Night by focusing on dancing instead of on the roles I was playing. I tried to be funny last year, this year I felt like trying something else. Skit Night is supposed to be fun. I've always enjoyed participating and I hope I contributed to other people's enjoyment too. If you don't like the content of the show, get involved and do something that you think is worth having on stage. Show your peers another side of your personality. That's what it's all about. ■

Skit Nite: A Brief Response

by Toby Moneit (Law IV)

This is my fourth year of reading Skit Nite debrief articles in the Quid. Over time, the articles start to sound the same. Some of the critical ones are more deferential, others less. Some, in a display of classic Quid Novi technique, couch the critique in humour - figuring, I suppose, that jokes soften the edges. Given the cycle of Skit Nite articles, perhaps there is no need for me to write. But then, I am leaving, so this is probably the best time for me to enter the fray. Rather than wax polemical, I will make a few brief, enumerated points. I will not make jokes, nor will I apologize. As a good friend of mine has pointed out, the women at this Faculty are always apologizing (if that sounds nutty to you, listen to the women ask questions or make points in class. Then compare it to the men.).

1) Choice:

Eleasha implored us to remember that the women chose to sing and dance and the men chose not to. Had more men volunteered, their acts obviously would have been accepted. No one is disputing this. No one is accusing the Skit Nite co-chairs of refusing numbers in which men strutted their stuff in high heels. And no one is saying that the women who did dance and sing weren't damn impressive. I am concerned, however, with the use of "choice" language. To my mind, we shouldn't be asking whether people did or did not choose to behave in a certain way (and then assure ourselves that sexism does not exist at Skit Nite because it is based on the foundational principles of a liberal democracy). We should be asking why they made those choices. Why did women choose to dance? Why didn't men? Is there something systemic in the institution of Skit Nite (and the law faculty, and law firms) that pre-determines those choices? I'm no Charter expert, but even I have lost track of the number of times I have heard the words "facially neutral". This refers, of course, to statutes that, on their face, apply equally to everyone but in practice lead to discrimination. My point ▸

about systemic factors is, I suppose, a questioning of a policy (the self-selection process of Skit Nite), which, on its face, appears neutral.

2) Perception's Reality:

I appreciate Eleasha's taking the time to go over what many of the dance and chorus numbers "meant". Based on her explanations, I can now see that a lot of work went into integrating the various acts. Again, that really isn't the point. I don't think it matters if we can stick to a theme really well if the way we do so is underpinned by systemic sexism. Furthermore, I'm not sure that it matters that the Skit Nite organizers had a plan for the show. There's a great scene in Six Degrees of Separation that goes exactly to the point I am trying to make. Unfortunately, since it has been so long since I saw it, I will only be able to paraphrase the message: one of the characters is talking about a teacher who only lets her young students have the papers they are painting for a certain amount of time before taking them away; after that, they "belong" to the viewer, not the creator. The same can be said about Skit Nite. The co-chairs can (and clearly did) work really hard to infuse the show with a certain message but once the curtain goes up, the show isn't theirs anymore. It is the audience's. And Daniela and I (two women who do not know each other and were not sitting together) can't be the only ones on whom the subtleties of Skit Nite's themes were lost. Explanations can't erase what we saw, heard, and felt.

3) Characters:

Although I appreciate the explanation of the symbolism in the dances, I find the responses to Daniela's points about the "president's debate" problematic. I am most concerned with the line: "Given that the other three candidates were men, we thought that Fern should be female." This seems to acknowledge that a female "character" was necessary. And yet, this need was fulfilled by a plant. Let me make my point even clearer: the only female candidate was a plant. I would have rather had no female candidate. It is cold comfort to me that this plant was maniacal and secretly running the LSA - to be honest, I didn't even catch that message until I read Eleasha's article. I thought it was supposed to be the profs playing poker who were actually "running the show", so to speak. The power-hungry woman manipulating everything from behind the scenes is just another stereotype of women.

I said I would keep this brief so I will stop here. I, too, hope for a better Skit Nite next year - one that makes a real effort to break down stereotypes, rather than reinforce them. Turning stereotypical remarks and behaviours into jokes may make us feel better about what we are doing but it certainly won't tackle systemic sexism. Maybe some people think that Skit Nite is not the appropriate place for ideology. Those are the same people who won't acknowledge that ideology is already there. ■

Blasting Muslims at Skit Nite!!

by Fadi Haddadin (Law I)

I remember I was having a good time at skit nite. I was sitting next to my girlfriend and some friends having a few drinks and enjoying the show. These good times ended abruptly, however, during one of the sketches. The person responsible for ruining my evening is called J.R. This obnoxious individual was sitting on the table next to mine drinking recklessly. I don't know whether it was his drunkenness or his sheer hatred that overtook the good part of his judgment, but he made some nasty comments about Muslims. This happened during the skit taken from the movie "Chicago", where one of the women found out that her man had five other women. I will not repeat the language used by J.R. as I think this language is more suitable to his kind of individuals, but it was very offensive. There, I stopped and asked myself: how has it become acceptable that one religious group can be a target of hate speech and intolerance without even stirring any reaction on the part of the people sitting around? Why do people like J.R. feel immune when they blast Muslims? These are questions that I find myself struggling to comprehend. I find it especially impertinent that such comments would come out of a law student at McGill University who is supposed to be more sensitive to intolerance and bigotry, and be more cognizant of the terrible results that this kind of talk might lead to. ■

Final Results Are In From Decision 2005

by Eleasha Sabourin (Law III) and Sam Adkins (Law III), Skit Nite Co-Chairs

The 2005 installment of the McGill Faculty of Law Skit Nite took place March 10th at the Medley and was once again a huge success. This year, our community came out in record numbers to witness the hidden talents of fellow students and professors and to help raise money for five Montreal charities. The success of the evening allowed Skit Nite to raise over $16,000 for Chez Doris, Dans La Rue, Générations, Old Brewery Mission and Share the Warmth Foundation.

Skit Nite would like to thank everyone who participated in the production of the show as well as to all those who attended the evening. Without your support, Skit Nite would not have been possible. We would like to specifically mention the contributions of Lainy Destin, Hans Black, Ken McKay, Tara Berish, Alexandra Humphrey, Jonathan Rabinovitch, Stephen Curran, Joseph "Video President" Adams, Kyle Gervais, Nancy Caron, Marc-André Beaudoin, Lani Rabinovitch, Lindsey Miller, Maude Perras, Erin Easingwood, Alexandra Stockwell, Amélie Guilbault, Martin Doe, Ian Osellame, Tristan Musgrave, Miguel Bernal-Castillero, Neil Modi, Frédérique Bertrand-Dansereau, Phil Alma, Benjamin Aronovitch, Ian Philp and Sam Moss.

DVDs of Skit Nite will be on sale in the faculty later this week for $15. Please watch notice board for more information on where and when you can obtain your copy.

Thanks again to everyone involved and good luck to next year's organizers. ■

President's Perspective: Thanks for a Fantastic Year!!

by Michael Hazan (Law III, LSA President)

After a long eleven months at the helm of the LSA, it is difficult to write down everything that has gone on in and around the Faculty during this time. All I know is that our accomplishments are owed to many dedicated and creative students who worked hard to bring you activities and served you to the best of their abilities.

In May, the LSA Executive met to outline our priorities and we succeeded in achieving most of them. These included having a spectacular orientation, the first ever "Bogenda" (which we delivered to students in September), resurrecting the Malpractice Cup (where we defeated mighty Medicine in October) and having an enthusiastic and large contingent for Law Games. We also set out to "Launch the Lounge" and now have secured approximately $8,000 for this student project as well as having all the architectural plans. While we wanted to break ground on this project in 2005, the summer of 2006 was a more realistic goal and the LSA hopes to have raised the roughly $50,000 balance by then and secure the naming rights to your new room.

Besides achieving these goals, I am proud to report that the LSA Executive with the help of Dean Kasirer and Professor Stephen Scott have successfully lobbied the university to keep Pino and Matteo's in the law building for 2005-2006. For the past two years, many McGill students have fought hard to prevent the university from privatizing food service on campus. Secondly, I would like to congratulate the Student Advocacy team (led by Renee Darisse, Suzanne Palko, Tara Berish and Pauline Gregoire) who won the SSMU Campus Group of the Year Award. Every year, your fellow law students represent McGill students to ensure that their rights our protected within the university. The Law Faculty was also nominated for Faculty of the Year and Website of the Year. Although, we didn't come back with the hardware, it was nice to be nominated in both of these categories.

As for our negotiations with SSMU, they are still ongoing. I recently sent acting President Andrew Bryan, the parameters of a new agreement but am waiting to hear back from him. I am hopeful that a new agreement between the LSA-SSMU will be reached before I leave office at the end of April. If not, I am quite certain that my successor, Andres Drew, will come to an understanding with the SSMU that benefits all law students.

I would like to say thank you to my Executive: Matthew Bilmes (VP Athletics), Lainy Destin (VP Public Relations) Andres Drew (VP External), David Dubrovsky (VP Finance) Andrea Hwang (VP Administration), Catherine Lambert (VP Internal), Toby Moneit (VP Academic), and Liat Tzoubari (VP Clubs and Services) for doing such an amazing job. Each and every one of you sacrificed a lot to do your positions and I wanted you to know how much I appreciated your ▸

efforts. I am so proud of the job that we have done.

For those of you who were involved with the LSA Council and our various committees, thanks for your dedication and hard work this past year. Special thanks to Dean Kasirer, Associate Dean Walsh, Assistant Dean Belanger, Assistant Dean Jukier and Assistant Dean of Admissions Lyn for their ongoing support of the LSA. Besides our great Faculty, we should consider ourselves lucky because we have the best support staff at McGill. Without the warm smiles and backing of Grace, Linda, Eileen, Marie-Helene, Thomas, Jane, Barbara, Christine, RoN, Margaret Baratta, Brigitte St-Laurent and Frederica, it would be impossible to do this job.

Last but certainly not least, I would like to thank my fellow students. Thanks for giving me the opportunity to be President. I know I haven't been perfect all the time and I made some mistakes but I wanted you to know that I tried to defend your interests as best as I could. I learned very quickly that it is very hard to keep every single student happy all the time, but I attempted to anyway. It was stressful at many points during the year, however, I am glad that I accepted the challenge to be your President. Good luck on your exams and have a wonderful summer. ■

Miss Orient(ed): A Play Review

by Mariam S. Pal (Law III)

Not too long after I moved to the Philippines, I began to notice the advertising directed at young women, exhorting the virtues of white skin and straight hair. There used to be an advertisement on the radio in which a young woman would go out with her friends who would all admire her "rosy white complexion". I found this rather interesting, considering that a "rosy white complexion" is not exactly something that is naturally found in most Filipina women. Yet this is the beauty ideal. Almost every shopping mall in the Philippines has a salon that will straighten hair to ensure that it has no wave whatsoever. In the Philippines, curly hair is considered "native". And drugstores are full of whitening products including whitening soaps, whitening powders, whitening makeup, and my favourite, whitening deodorant. Apparently, Filipina women are convinced that their underarms are dark and that they therefore need whitening deodorant.

Having visited quite a few countries I'd have to say that most cultures have their own beauty myths. Light skin certainly ranks high on the list all over the world. In the context of a particular country such beauty myths may make some sort of sense but once they become transplanted to other cultures through immigration then they start to look a little out of place. They may even appear unintentionally hilarious. The play that I saw the other night, Miss Orient(ed), is about what happens when you bring the Filipino beauty myth, as exemplified in the Miss Pearl of the Orient beauty contest, to Montréal.

The plot is quite simple. Three young Filipinos are vying for the title of Miss Pearl of the Orient. Twinkle is a pleasantly plump Filipina working as a housemaid in Hampstead. She is plain and shy and dares to dream that she could become Miss Pearl of the Orient. Jennifer has been pushed into the beauty contest by her mother who had won a similar contest back in the Philippines. The third contestant, Carrie, sports blond tresses and is a beauty contest veteran. We are guided through the contest by the Beauty Icon who parades through the play wearing an assortment of red evening gowns, red high heels, a red velvet cape trimmed with fur and a tiara. The girls passed through the usual hoops - the evening gown walk, the talent contest, and the world peace question. As the play progresses, it becomes clear that the newly crowned Miss Pearl of the Orient will not really be a Canadian but a Filipina and that is the nub of the question: where does one identity stop and the other began for immigrant women? Certainly one of the criteria for beauty is being light-skinned. One of the contestants' blond-haired mother makes a cameo appearance, telling the audience about how pleased she is with the nose job that really made her look Canadian.

The play is fast-paced and seems to end before you know it. I found the acting terrific; all four actresses had great timing, well-developed characters and a fantastic stage presence. The simple set was imaginative, yet effective, and the lighting and video design further enhanced the production and the message of the play. No production about the Philippines is complete without music, and on this score Miss Orient(ed) did not disappoint.

Perhaps my favourite scene and what is certainly the most poignant one occurs when Jennifer is practicing her answers to questions. All of a sudden, an unexpected question comes up: "When did you first know that you weren't white?" Jennifer recounts the story of a trip to the US border ▸

when she was 20 years old with a group of friends she had been in school with since grade two. As they had approached immigration, her friends had kidded her that she should perhaps lie down on the back seat of the car and pretend to be taking a nap so that the immigration officers would not think that they were bringing her in as an illegal immigrant who was going to work somewhere as a housemaid. Jennifer had wondered aloud "But I was born here."

One of the things I really like about the arts scene in Canada is that all these kids who came here as immigrants from other countries are growing up and becoming artists who bring their own cultural perspective to whatever they do. This gives us a richness that few countries have. I don't get to the theatre much these days, but I'm so glad that I made the effort to see Miss Orient(ed). It made me laugh. It made me very nostalgic for the Philippines. But best of all it made me think. And that's why you should see it.

Miss Orient(ed) was presented by the Teesri Duniya Theatre Company, founded in 1981, whose mandate is to produce socially relevant theatre. The company is best known for its production of the play "Bhopal" which was about the chemical spill in India 20 years ago. ■

La faculté de droit se mobilise par solidarité - Mobilization of the Law Faculty in Solidarity

par le Comité de Solidarité/ by the Solidarity Committee

On March 21st, the Faculty held a colourful spectacle, which could have been a judicial drama but ended as a burlesque parody. You may have figured out that we are talking about the General Assembly regarding the student strike, or was it just an afternoon discussion, who knows... All the same we would like to tell you about Monday's events in the famous Moot Court of New Chancellor Day Hall.

Sans vouloir entrer dans les détails techniques ayant transformé une assemblée en Vaudeville, nous croyons important que le message qui fut exprimé là-bas soit divulgué aux étudiants de la faculté qui n'ont pu y être. Environ 120 personnes se sont déplacés pour discuter de la grève étudiante, évidemment, mais aussi de la solidarité, qui jusqu'à maintenant semble faire défaut à McGill.

Of course, it was never a question of an indefinite strike. The students present agreed that any gestures taken would only have symbolic value. But what a symbol! Everyday, the papers announce that a faculty that has traditionally been against the strike movement has voted to support it. Gestures of solidarity by law students, from McGill at that, would not arise except in the face of an unacceptable situation. Well, colleagues, the present situation was declared unacceptable.

Lors de cette assemblée, les étudiants ont voté en faveur d'une grève symbolique d'une journée prévue le jeudi 24 mars (vous n'avez pas vu de grève vous? Ça c'est la partie comédie de boulevard de l'assemblée), et ce peu importe le vote de grève du SSMU, ce qui revient à dire que le vote contre la grève du mardi 22 mars de la SSMU n'aurait eu aucun impact sur les événements dans cette faculté.

In addition, students voted that the LSA executive, representing the faculty, assert that the law students of McGill University demand the complete reinvestment of the $103 million in question into the bursary program. As well as a number of technicalities concerning the strike, students voted in favour of a day of action, to promote reinvestment of the sums in question by alternative mediums such as declarations, open letters to Ministers and, most importantly, dialogue.

Ce que nous vous demandons de retenir, c'est que les étudiants en droit se sont mobilisés, se sont montrés solidaires, se sont unis aux autres étudiants de la province pour dire NON. Il serait facile que la saga judiciaire entourant cette assemblée fasse de l'ombre à ce message. Après tout, nous avons eu droit à un meeting transformé en assemblée générale des étudiants qui fut par la suite contestée en face du Judicial Board, contestation qui fut renversée pour absence d'intérêt raisonnable, puis une injonction sur la grève a été ordonnée, d'autres audiences furent entendues et au moment d'écrire ces lettres, de nouvelles décisions rendues.

Whatever the judicial saga, the contestations, and sword throwing after Monday's meeting, the fact remains that the students of McGill's faculty of law have spoken. Whether you are for the strike, against the strike, for free education or for increased tuition fees, don't be deaf to this voice that for one rare occasion made itself heard. ■

Conflit de deux formalismes

par François Beaudry (Law I)

Vous connaissez comme moi la tendance des étudiants en droit de McGill à favoriser une vision très large et inclusive de la loi. Dans notre faculté, le formalisme n'a pas la cote. Les arguments de valeurs (mot encore à définir) sont bien plus populaires, et avec raison. Cependant, quand vient le temps d'appliquer la loi pour régir une activité démocratique à l'échelle de leurs moyens et de leurs prétentions, les étudiants de notre faculté optent pour le formalisme, délaissant les grands arguments qui semblent en assemblée perdre leur lustre académique.

Lundi dernier, à l'assemblée générale de l'AÉD (qui trouve dans sa version anglaise la traduction inadéquate de meeting) nous avons expérimenté les difficultés inhérentes au bon fonctionnement de toute assemblée politique. La question de validité du processus par lequel le vote de grève a eu lieu (car il y a eu vote de grève) en a dérangé plus d'un. Nous étions 120, et puis 60... sur environ 600 étudiants. Pourtant, le quorum de 5% était largement dépassé. Pour la majorité des gens présents à la réunion, il y avait " démocratie ", peu importe ce que ce mot veut dire. Malgré le ridicule aigu et palpable d'une assemblée générale peuplée de si nombreux absents pour discuter d'une question aussi cruciale que la grève, les mots " assemblée générale " et " souveraineté " retentissaient l'un après l'autre et à répétition.

N'y a-t-il pas un certain désir de se limiter à la forme et au minimum imposé par les règles de l'assemblée générale, un certain relâchement dans la recherche de vérité et de réelle démocratie participative, recherche qui anime si souvent les étudiants dans le cours de fondements du droit? Il est tout à fait vrai que le quorum était respecté. Cependant, étions-nous chacun convaincus que l'assemblée générale représentait les désirs de la majorité des étudiants en droit? Vous me direz que les assemblées générales ne représentent jamais l'opinion de la majorité. Probablement, mais dans bien des cas, il s'agit d'approuver des décisions plutôt anodines. Vu l'importance des circonstances, ne ressentons-nous pas un devoir qui nous forcerait à nous imposer davantage que n'en impose la constitution laxiste de notre association? En remontant aux sources du quorum, qui a pour double mission d'éviter que la majorité soit prise en otage par une minorité négligeable tout en permettant que les réunions puissent avoir lieu relativement aisément, pouvons-nous, quand le second critère n'entre plus en jeu à cause de l'intérêt de la question en litige, nous satisfaire de remplir un quorum peu exigeant, qui, dans les circonstances, ne s'est pas montré à la hauteur de sa mission d'assurer une représentation adéquate des opinions des étudiants?

Malgré le niveau décevant de participation des étudiants à cette assemblée, il serait futile de présumer de l'opinion de tous ceux qui n'y ont pas assisté. Certains affirmeront que les absents ont toujours tort : attention! ceux qui sont présents n'ont pas toujours raison. Ne voulant aborder l'épineuse et ô combien sensible question de la répartition linguistique des membre de l'association présents à l'assemblée, je suggère, sans en être convaincu, que les disproportions dans la représentation étudiante ne reflétaient pas seulement une différence dans le niveau d'engagement mais aussi le manque de clarté de la version anglaise de la convocation. Ayant lu seulement cette version, car il est généralement moins laborieux de lire la version anglaise des messages nous provenant de l'exécutif de l'AÉD, j'avais l'impression que l'assemblée n'avait aucun pouvoir et ne servait qu'à discuter de la grève plutôt qu'à voter des résolutions au nom de l'AÉD. J'ose proposer, par le nombre d'interventions entendues en anglais, et parfois même dans un anglais approximatif et à saveur typiquement québécoise, tel le mien, que la version anglaise du message n'était pas une convocation à une assemblée générale. Si c'en était une, pourquoi ne pas avoir utilisé les mots " general assembly ", que le SSMU ne répugne pas à utiliser.

Comme nous sommes humains, et encore davantage apprentis juristes, un argument formaliste ne saurait susciter une acceptation passive de la minorité qui se sent flouée par une majorité trop peu convaincante ou représentative. L'inévitable arriva. Un participant lança : " This assembly is unconstitutional. " Malgré les oppositions de certains, force était de constater qu'il avait raison. La constitution exige un préavis de dix jours avant une assemblée générale. Malgré les plus impressionnants ▸

efforts que pourrait faire le comité judiciaire de l'AÉD pour promouvoir une interprétation large, le préavis de deux jours était clairement une violation de la constitution. Formel et sans importance, diront certains. Oui, il faut l'admettre. Cependant, peut-on réellement condamner ce recours à une disposition très étroite de la constitution pour faire tomber dans l'inutilité les deux heures de débats et les résolutions adoptées, quand l'on se répète ad nauseam que l'autorité de cette assemblée vient du quorum de 5% des membres (qui était atteint et même dépassé, je le rappelle, pour ne pas manquer d'objectivité), autre mesure tout aussi formaliste et arbitraire que le préavis obligatoire de 10 jours? Que les personnes présentes au début de la réunion aient décidé qu'il s'agissait d'une assemblée générale qui serait valide malgré toutes les irrégularités ne peut convaincre un étudiant de droit que l'assemblée jouissait de toute la légitimité dont elle se réclamait. L'objectif même du préavis obligatoire, garanti par la constitution, est que tous aient une chance de participer au débat. On ne saurait en cette situation décider que cette protection de la minorité absente doit tomber parce que les personnes présentes ont décidé d'exclure les absents.

Cependant, il demeure déplorable que la validité d'une assemblée de deux heures ait seulement été décidée en raison d'un argument si peu convaincant pour celui qui recherche le fond des choses et l'esprit qui vient éclairer la lettre de la loi.

Ne me considérant en aucun point au-delà de tout blâme, je n'oserais faire la leçon à mes pairs. Cependant, permettez-moi quelques suggestions, qui me visent autant que vous. Apprenons notre constitution, et réformons-la si besoin est. Évitons de nous prendre trop au sérieux et de laisser notre gros bon sens à la porte afin de se cacher derrière une observance stricte des règles. S'il vous arrive, en ce temps pascal, de feuilleter la Bible, qui vous sera gracieusement offerte dans bien des stations de métro, notez l'adroite caricature qui est faite des scribes, dont nous serions probablement les équivalents modernes... J'aimerais bien, la prochaine fois que nous parlerons de la souveraineté d'une majorité qui parle au nom de l'assemblée, que nous ayons déployé tous les efforts nécessaires pour nous assurer que cette majorité entende, écoute, participe, comprenne et vote. Si, après avoir investi de réels efforts pour atteindre un fonctionnement démocratique satisfaisant, nous n'arrivons pas encore à intéresser la majorité des étudiants, alors nous constaterons notre échec collectif et ferons ce qu'il est possible de faire avec les moyens qui nous seront disponibles. Qui sait, peut-être que personne n'osera explorer les profondeurs de la constitution si l'on sent que, par l'assemblée générale, nous en sommes venus à une forme acceptable de démocratie de participation. D'ici là, que la Loi nous garde, et que Dieu, ou Allah, ou notre voisin de table nous garde de la loi. ■

Oui aux 103 millions, non à la grève, non à la FEUQ, oui à la liberté
Ou pourquoi j'ai traversé le piquet de grève

par Julien Morissette (Law I)

Je suis tout à fait d'accord pour dire que le gouvernement provincial devrait reculer et éliminer la coupure de 103 millions de dollars au programme de prêts et bourses. Notre société a tout intérêt à donner la possibilité à tous de faire des études collégiales et universitaires, sans égard au niveau de revenu. C'est un projet de société éminemment désirable.

Pourquoi alors suis-je contre la grève? Pour plusieurs raisons. Premièrement, à mon avis une grève n'est préjudiciable à personne... sauf aux étudiants! Comment est-ce que ne pas aller à nos cours va faire avancer la cause? Contrairement aux propriétaires d'une entreprise privée qui souffrent d'une grève des employés, personne d'autre n'est affecté par l'absence des étudiants. Peut-être que le temps d'étude perdu aura un coût social - ce sera alors une perte sèche qui ne bénéficiera à personne. De plus, les étudiants moins nantis perdront du temps pour travailler cet été, ce qui ne va pas les aider... Deuxièmement, il existe d'autres moyens de pression peut-être moins spectaculaires, mais tout aussi efficaces, et les étudiants ne manquent pas d'imagination! En plus, une grève divise inutilement les étudiants, en créant un environnement où beaucoup de gens sont intimidés et se braquent inutilement contre la revendication légitime à l'origine du mouvement.

Je suis d'autant plus contre la grève que la FEUQ et les autres organismes étudiants qui en sont les instigateurs utilisent le mouvement actuel pour faire valoir toutes sortes d'autres revendications dont je ne suis pas ▸

solidaire. Le gouvernement a coupé l'aide financière pour tenter de récupérer l'argent qu'il devrait obtenir par une hausse des frais de scolarité. Le problème, c'est que la FEUQ adule aussi la vache sacrée des frais de scolarité gelés. On veut que les universités soient accessibles, mais aussi bien financées. Les frais sont trop bas et augmenter les impôts n'est pas viable. En réalité, ce sont les étudiants plus riches qui bénéficient des frais de scolarité gelés. C'est une mesure particulièrement régressive. La solution est simple : augmentons les frais de scolarité, en utilisant une partie substantielle de cette augmentation pour l'aide financière. Ainsi, le système sera plus équitable. Ceux qui ont les moyens paieront plus, ceux qui n'ont pas les moyens paieront moins et nos universités seront mieux financées. Si on est pour la " solidarité ", comment peut-on être contre cette solution?

Une dernière note. Une petite minorité de personnes impliquées dans le mouvement de grève ont tenté d'identifier des groupes de " méchants " non grévistes (notamment, les étudiants anglophones qui pour la plupart ne viennent pas du Québec et ne se sentent pas concernés). Soyons sérieux. Je crois que l'on peut avoir un débat civilisé et respectueux sans name calling. La liberté de faire la grève, c'est aussi la liberté de ne pas faire la grève. C'est une chose de tenter de convaincre quelqu'un de changer d'avis, ce qui est un fondement de notre démocratie. C'est une autre chose de dénigrer quelqu'un parce qu'il refuse de changer d'avis. Je ne qualifierais pas ce comportement, mais je crois qu'il est inacceptable.

Les étudiants moins nantis ont droit aux 103 millions. Mais n'oublions pas que les enjeux politiques dépassent largement la question des prêts et bourses et que la grève n'est peut-être pas le meilleur moyen de pression. Solidaire, oui, gréviste, non. ■

Stéréotypes, image, réalité : La condition des enfants handicapés en France

par Clara Cameron (Law I)

Je suis comme toi parce que je suis capable d'entendre, d'apprendre, de raisonner comme toi. Je respire comme toi, j'ai faim comme toi et j'ai comme toi des besoins et des envies. Je ne suis pas comme toi parce que mes membres ne sont pas aussi robustes que les tiens et que je ne suis pas capable de faire certains travaux manuels comme toi. Je n'ai pas voulu être handicapée et c'est dur à supporter. J'aimerais qu'on s'occupe de moi. J'aimerais qu'on m'aime. J'aimerais qu'on me respecte et qu'on me fasse confiance. J'aimerais aussi qu'on me prenne au sérieux.

- Mwaniki Makau, 10 ans (Veil 15)

Avec l'étude de la nouvelle loi par rapport aux handicapés en France qui est devant le Sénat et l'Assemblée nationale en ce moment, j'ai écrit un petit mot à propos des droits des enfants handicapés en France. Pour moi, le sujet de droits des handicapés est personnel. Je suis handicapée de naissance, j'habitais en France pendant deux ans et j'ai fait ma thèse de maîtrise à propos de ce sujet.

Chaque enfant fait sa marque dans ce monde. L'enfant handicapé a ce même droit. Il a le droit de vivre tranquillement comme un autre enfant de la société. Mais quoique cet idéal soit un désir concret, l'enfant est toujours confronté par des obstacles immenses. Plusieurs directives ont été mises en place en France pour répondre à cette mentalité, en particulier celle du 30 juin 1975 qui constitue la première loi, première en ce qui concerne l'état de l'enfant handicapé. La loi, maintenant codifié, essaye de trouver les meilleures façons à engager l'enfant handicapé dans la vie ordinaire, en assurant l'éducation, l'accès au transport et l'aide aux frais encombrant par rapport son handicap. Mais est-ce que cette loi suffit ? À mon avis, pas du tout ; en fait, il reste beaucoup de travail à faire pour que l'idéalisme que nous allons constater dans les lois devienne une réalité tangible. Il y a encore beaucoup d'échappatoires au sein de la loi auxquelles qu'il faut remédier. Et puis, un plus grand problème réside dans le concept fondamental du droit des handicapés : les lois stabilisent leur condition précaire par rapport à la société mais elles n'effectuent pas le changement nécessaire pour rendre l'image de l'handicapé plus normale et égale. Il faut changer la vision de l'enfant handicapé pour que la société soit plus équilibrée. Il faut que la société ait plus de familiarité en ce qui concerne l'enfant handicapé. On peut espérer que cette nouvelle loi tiendra compte de ces intérêts en encourageant la société à prendre un plus grand rôle dans l'avancement du statut de l'enfant handicapé.

The LSA is recruiting for the following committees for 2005 to 2006:

Curriculum Committee (1 position) – Responsible for providing feedback on proposed curriculum and course changes.

Admissions Committee (2 positions) – Responsible for assisting with the student admissions process. These positions are only open to students in the final year of school.

Staff Appointments Committee (1 position) – Works with faculty to interview and evaluate prospective candidates for teaching position at McGill Law.

Library Committee (2 positions) – Provides feedback on operation and expenditures associated with Nahum Gelber Library.

Prizes and Scholarships Committee (1 position) – Works with faculty to set criteria and choose recipients for prizes and scholarships.

Computer Committee (2 positions) – Works with computer technicians to provide input on computer expenditures and upgrades. Also oversees the administration of pubdocs.

Educational Equity Committee (3 positions) – Initiates projects to promote ethnic/social/economic/cultural diversity at McGill Law. Past projects have included recruitment information sessions targeting minority groups (2003-2004) and the creation of a mentor program (2004-2005).

Orientation Committee (3 positions) – Organizes two weeks of orientation events, fundraises in conjunction with the VP Public Relations, finds volunteers to staff events and communicates with new students. The majority of the Committee's work takes place over the summer so prospective candidates must be in Montreal for most of May to August.

If you are not interested in being a member of the Orientation Committee but are still interested in helping in some organizational capacity, please feel free to submit a cover letter outlining the ways in which you might be able to help. Depending on the Orientation Committee's needs, you may be contacted over the summer to assist with projects. Please note that Orientation leaders will be recruited at a later date.

Placement Office Advisory and Planning Committee (2 positions) – Meets with staff of the Career Placement Office to provide feedback on recruitment and career-related activities.

Skit Nite Committee (2 positions) – Oversees all aspects of Skit Nite, including recruitment of performers/committee members, fundraising, developing a theme and marketing.

Yearbook Editor-in-Chief (1 position)/**Assistant Editors** (3 positions) – Publishes and promotes the annual faculty yearbook.

Translation Committee (2 positions) – Responsible for translating LSA documents. Translation is primarily English to French, but some French to English may be required.

LSA Judicial Board (3 positions) – Responsible for adjudicating election and LSA-related matters.

Chief Returning Officer (1 position) – Oversees the election process in the fall and spring. Responsible for advertising available positions, recruiting volunteers to staff polls, preparing ballots and tabulating results.

Graduation Committee – (4 positions)- Responsible for organizing the annual graduation ball and undertaking related fundraising activities. Responsible for administration of the Valedictorian selection process. Assist with preparations for Convocation ceremonies, if necessary. Preference will be given to members of the graduating class although applications from lower year students will be considered.

Awards Committee – 3 positions- Responsible for the administration and distribution of LSA awards, including the *LSA Teaching Excellence Award*, the *Alan Neil Assh Award* (contribution to sports), the *Patricia Allen Award for Participation* (extra-curricular involvement) and the *Law Student Association Graduating Student Award* (outstanding contribution to student life). This committee's work is concentrated in March and April.

Web Designer- (1 position) – Responsible for updating and maintaining the LSA website. Works in coordination with the LSA executives.

Please submit a cover letter and resume for each position that you would like to apply for. Students are welcome to apply for multiple positions.

Applications are due by 4 pm on April 1, 2005. Please deposit applications in the VP Administrative's mailbox.

Interviews (if required) will take place either in April or early May, at the discretion of the incoming LSA executive. In the event that interviews are scheduled for May, telephone interviews will be arranged for any candidates who are out-of-town for the summer.

If you have any questions, please don't hesitate to contact the VP Administration at andrea.hwang@mail.mcgill.ca or feel free to contact current committee members directly (they're all listed towards the front of the Bogenda and the LSA).

The Simple Life or The Real World?

by Jarom Britton (Law II)

There was a movie in the '80s - "Moon Over Parador." In this movie, Richard Dreyfuss plays a banana republic dictator who likes to pretend he lives in a democracy. Every four years the citizens vote on whether they want him to wear blue or red at public appearances. He argued that this was public input, citizen participation, democracy. Except that the people didn't have any real power over how they received justice.

But the movie was make-believe and not a reflection of real life. In real life, countries that have elections are more democratic and the citizens have more power, right? What about Hussein's Iraq? Just before the US invaded, he had a referendum on his presidency. So how was it that the people were oppressed and had no justice if they could vote? Well, if I had the choice between Saddam Hussein and prison, I know what I'd choose.

But what about Canada? Canada's a true democracy, right? Your vote counts. Politicians listen to what ordinary Canadians want. If they don't we can vote them out, can't we?

I read an article discussing why the Americans never simply hired an assassin to kill Saddam Hussein and solve the problem without war. They were worried that if they took that route, whoever would replace him would not be any improvement. Here's a question: if we vote out the current government in Canada, would the government that replaces it be any different?

I don't say this to be cynical. Is it not possible, or even likely, that politics in a "liberal democracy" simply attract the same type of people regardless of their ideology? Paul Martin, Peter MacKay and Stephen Harper all grew up with politician parents. Jean Chretien, Brian Mulroney and Lucien Bouchard went to the same law school. If that's not spooky enough, every single prime minister of Canada in the twentieth century with the exception of Pearson was a lawyer (well okay, Joe Clark dropped out of law school but was he a real prime minister?).

But the similarities don't stop there. They are all from well-to-do families (i.e. they didn't grow up in an impoverished northern community and probably never milked a cow at 5 a.m.) and spent a greater portion of their lives in the cities. Only three prime ministers in recent memory (i.e. post-Pearson) were from the West, and they all came from urban ridings and were voted out after a few months.

So what does this tell us? If you wanna have power and make the laws, you'd better come from old money, get a law degree, and hail from a big city east of Dryden.

For all their talk of being tolerant and accepting of other people, folks who spend most of their life growing up in Canada's urban centres tend to be pretty arrogant. They talk of people in rural areas as if they were a bunch of redneck simpletons.

Take the Fox network. Ah, that great bastion of North American social values that is the Fox network! Last year, an estimated 10% of North Americans were glued to their television sets to watch as two pretty heiresses experienced for the first time "The Simple Life" on an Arkansas farm. And isn't that the way urbanites think of rural life and rural people? Simple? Unsophisticated?

And how could a bunch of simple, unsophisticated rural people administer something as complex and sophisticated as justice? Justice requires lawyers, and courts, and Parliament, and judges. To administer a legal system you have to be educated, right? It takes years of study and training in writing facta and analyzing past judgments and honing your advocacy skills. Justice is something much too complex to be administered by a bunch of unschooled country hicks. The Incas couldn't have had justice in their society; they had no universities. No wonder they're extinct!

The world is increasingly complex, you say. More and more we are becoming interconnected and legal systems are running into each other. Well I've got some news for you ...

Montreal has more in common with Toronto, New York, London, and Sydney than it does with Trois-Rivières, Chicoutimi, Gaspé, or Témiscamingue. Urban centres are becoming increasingly interconnected across the world.

But the global village is a myth!

It does not exist for inhabitants of rural areas. For people from urban environments who seem to ▸

dominate our country's law schools, this isn't very apparent. In the urban, middle-to-upper class mindset, the other side of the world might just as well be down the street. But for Joe Canadian in Flin Flon who makes his living installing electrical conduit, Tokyo might as well be on Pluto.

What it comes down to is this: there are two types of people in the world - those who will take an airplane, and those who will never take an airplane. Every day, thousands of planes fly tens of thousands of people miles over the heads of hundreds of thousands of other people to exotic destinations around the globe. The vast majority of these tens of thousands of people are city-folk flying far out of reach of the hundreds of thousands of others.

Lawmakers are of the jet-set variety. Not only that, many of the important, powerful ones are of the first-class jet-set variety.

Now that's pretty disgusting isn't it? First class. Not only do you want to fly so far over the rural communities that they can't reach you and you can't really see them, but for the odd simpleton that does manage to take a once in a lifetime vacation to someplace "interesting" you need to have your own Air Canada or Star Alliance lounge and sit at the front of the plane with a curtain drawn so you never even have to cross their path while you travel. Out of sight and out of mind.

But you still want to govern them. The benevolent dictator.

Oh, they say the right words. "Don't forget the native peoples. After all, we are the big bad colonizers." Yeah, let's beat ourselves over the head with that one for a while longer, why not? I'll tell you why not. I didn't do it. My family didn't do it. At the time the English and French were squabbling over the Ohio River, my family was living it up under its own oppression in Sweden and Ukraine. At Confederation, they were still over there. I met my immigrant ancestors. That's a bit recent to be blaming me for the tyranny that led to the Red River Rebellion.

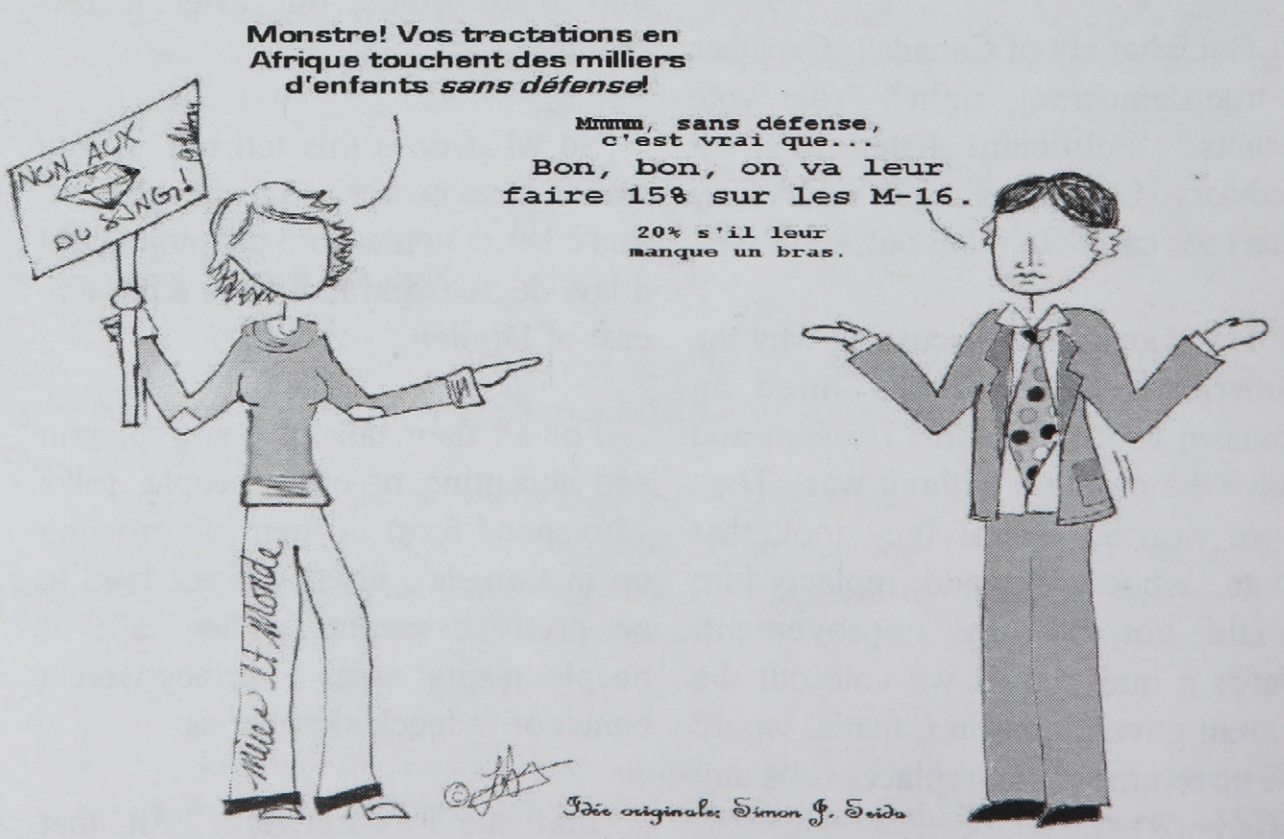
Okay, but my white culture still oppresses the native peoples. So where are these oppressed native people that I've been oppressing? I grew up in a rural community that is somewhere between 40 and 60 per cent native. And I didn't see much in the way of oppression of native peoples there. They are on the town council, they are the business leaders, they are the richest people in town, they are my cousins. And you know what? We all get along.

We're so remote from Ottawa and Victoria that the influence they have on our finding justice is relatively minor. Okay, we pay our car insurance to Victoria and they give us ferry service so I guess we have some connection with them. Ottawa - well who knows what Ottawa does for us? The last time we had an MP who was a member of the government was - umm - I don't remember. The last time we had an MP who was a member of Cabinet? Well that's never happened.

Just about the only time we run into the formal "justice" system is when we do something that the ▸

Les Aventures du Capitaine Corporate America

par Laurence Bich-Carriere (Law I)



«Les enfants de la guerre I»

legal system (developed by outsiders) defines as "criminal." Couldn't we have done better by establishing our own system that corresponds more precisely to our own needs?

Quebec got to.

Isn't it true that urbanites are way too ignorant of rural life to justly legislate there in the same way that rural people don't understand the "complexities" of an urban environment to do the same in the city? Just because they feel they should subscribe to a left wing, pro-minority, special-interest ideology doesn't mean urban activists are necessarily informed on the issues they espouse. In many cases, they are simply paying lip service without understanding the context of what they are talking about.

Now sometimes it's obvious. But in many cases, the problems have been going on for so long and developed such a complex history and interdependence that to simply state that one side is "right" is grossly inaccurate.

Whether or not you agree with it, our legal system is largely based on business. A familiar maxim is that the first rule of business is stability. A universal, predictable legal system is seen as key to this desired stability. As many laws are made to smooth business relations, and as most business takes place in urban centres, it follows that many of the laws will be made in an urban setting based on the culture of a city.

Why impose this system on rural citizens?

The cities don't have the same value system as rural Canada. This year, it looks like Parliament is going to legalize marriages of same-sex couples. Polls indicate that this is the legal system simply catching up to the dominant values of a progressive democracy. This is what Canadian society wants, they say.

What a load of bull!

Media moguls, justice ministers, and social activists are all missing something big here. They're all in the cities. Sure the polls are randomly conducted across the country but I've got a bit of a shocker for you … most people live in cities! Urban society is changing. But, if law wants to maintain a just society shouldn't it be sensitive to what the local community thinks instead of imposing values from halfway across the country? Montreal may be for the most part approving of same-sex marriages. This is appropriate for the culture of Montreal. But try your poll in the Mormon towns that make up basically every point in Alberta south of Calgary. What do they think about this whole thing in Lethbridge? Gay marriage will be enforced just as much there as it is in the Village in Montreal. But do inhabitants of Cardston really care what happens on Ste-Catherine's Street? Does the fact that it is the right thing to do in Toronto make it any less unnatural in Taber?

Imposing an urban-developed legal system in a rural environment is imposing a system foreign to the environment regardless of its source and regardless of the ethnic background of the rural inhabitants. Coming along after the fact and imposing a system of law on people that have carved out a co-operative niche will not result in justice if that system of laws is developed in a context foreign to the context in which it is applied.

Simply improving access to a legal system that does not respond to the values of the society in which it is ▸

applied will not improve access to justice.

If politicians, lawyers, and judges are all coming from the same stock and that stock doesn't accurately represent the demographics and varied cultures in the country, how is it that justice can be adequately distributed to people not from these backgrounds? If the system isn't structured to entice people from rural backgrounds to join then things won't get more just for them. Sure the lawmakers and legal professionals can be encouraged to take ethnic and cultural background of the parties into consideration, but if they don't understand that background, how can they apply the norms of the society in which the parties operate?

And I'm certainly not saying that it would suffice to adopt "aboriginal" law. For one, it doesn't exist. Not like that. Speaking of aboriginal law as if it is all the same thing is like saying European, Islamic, and African tribal systems are all the same because they come from the same hemisphere. Haida people had never heard of the Cree or the Mayans. Their legal systems weren't the same either. Secondly, imposing an "aboriginal" legal system in a modern, urban culture would be just as unnatural and unjust as what we've already done in the opposite direction.

Allowing people from varied locations to gain legal training or to be elected to positions of lawmaking capacity will do little to improve access to justice if the system they become part of is so inflexible or so disconnected so as not to recognize the culture in a remote community in which it is imposed.

All this doesn't mean that justice is never served a rural setting. People are remarkably good at resolving matters of conflict on their own. Most people don't find justice in the courts. Most people when they feel wronged take justice into their own hands. That's not to say that they stockpile arms and start a Hatfield-McCoy-style feud. We go see if we can work it out. If we really start having trouble with someone, we might spread some rumours. Rarely will a disagreement result in legal action.

The problem comes when we try to equate the legal system with justice. Any "system" is way too structured, inflexible and unnatural for that. Rural life is simple in the sense of being practical, uncomplicated and ad hoc. It makes sense that the approach of a just legal system would be the same for that setting.

Allowing the system to adapt to the local norms of a society would go much further in improving access to justice. Failing to do so pays lip service to access to justice while doing nothing to equalize the distribution of power in the society. Allowing matters of local justice to be defined, implemented, and resolved locally would do much more to improve access to justice than would imposing a system developed for a different time in a different place for a different culture. ■

Hitler was a Human Being, a Distant Brother of Cotler, Together Comprising a Greater Human Family

by Marcus Boire (Law II)

The books abound with a vilified image of a man born with Jewish blood. Particular to this image is an almost complete rejection of the human character of his person. But everyday we are reminded that this cannot be the truth. Hitler was, in fact, a human being.

Even the most trivial examples support this radical assertion: 1) whenever someone purports ethnic nationalism or a dogmatic attachment to a homogeneous social group, we are reminded that Hitler was a human being, 2) when ministers of justice support the ostracism of a grouping of persons in the name of fighting international terrorism, we are reminded that Hitler was a human being, and 3) when the quest for efficiency in human activities becomes an end in itself, we are again reminded that Hitler was a human being.

On a more global scale, it is fascinating how little we are told about the role played by the West in the midst of Nazi Holocaust. The ethnic Swiss crafted their skill at financing human exterminations. The Swedes enjoyed lucrative trade in weapons. And Canada made use of its newly gained independence in foreign policy by turning away Jewish shelter-seekers. But for some reason this part of the story is not told. Instead the Western consciousness is continuously inundated with the idea that Hitler and the Nazis were somehow inhuman and not part of the human family.

In light of the role played by the law with regards to our historical and social understanding of Hitler, ▸

major restrictions on free speech have been accepted in the name of perpetuating the inhuman perception of his person. In writing this article for example, I could be found liable in defamation for calling Irwin Cotler a brother of Hitler. Essentially, any association that is made to Hitler or the Nazis in general creates a valid ground for defamation. One must ask how this can be legitimized in a so-called free and democratic society? Are there absolutely no legitimate associations that can serve to prevent ethnically-motivated thinking?

What has been lost in the history of Nazi Germany and the horrors suffered by Jews, Poles, Russians, gays, and the disabled is a recognition of the fact that what Hitler orchestrated was actually quite human, and representative of the kind of cruel and dogmatic thinking human beings are unfortunately susceptible to. It is, of course, extremely difficult to ask someone touched by the holocaust to preach openness and acceptance over close-mindedness and dogmatism, but if not, how far have we really come in 60 years? The Europeans have yet to get their share of the blame, and the Arabs have been punished for something they had no part in. Is this how past injustices should be resolved?

Moreover, the mentality imported from Europe which praises ethnic nationalism over civic inclusion has ensured the continued existence of our Hitlerian tendencies. The Israelis have passed laws to prevent "mixed marriages", just as the Nazis did in passing the Laws of Blood and Honour in 1936. The French have passed laws in violation of the religious freedoms of the poorly-treated and socially excluded Arab minority. And in Quebec, we still have dogmatic nationalists purporting that they are 100% Quebecois. This denial on the part of the French in North America of the existence of native blood is quite astounding given that sexual contact between French settlers and Native women (often in the form of rape) was widespread due to a shortage of women in the new colony. This continual promotion of the myth of ethnic purism is nothing short of an affirmation and legitimisation of Hitler's legacy.

But not everyone sees things this way. For some, the fact that our justice minister, a former professor of human rights at McGill, is now committed to fighting a war on terrorism doesn't present itself as a contradiction in terms. For others, it is a sign of how intellectually bankrupt this faculty is, and how dogmatism is often taught in place of critical thought. Because isn't that what the war against Hitler's legacy is all about? A war against dogmatic, ethnically-motivated thinking that serves to divide the world more than unite it? ■

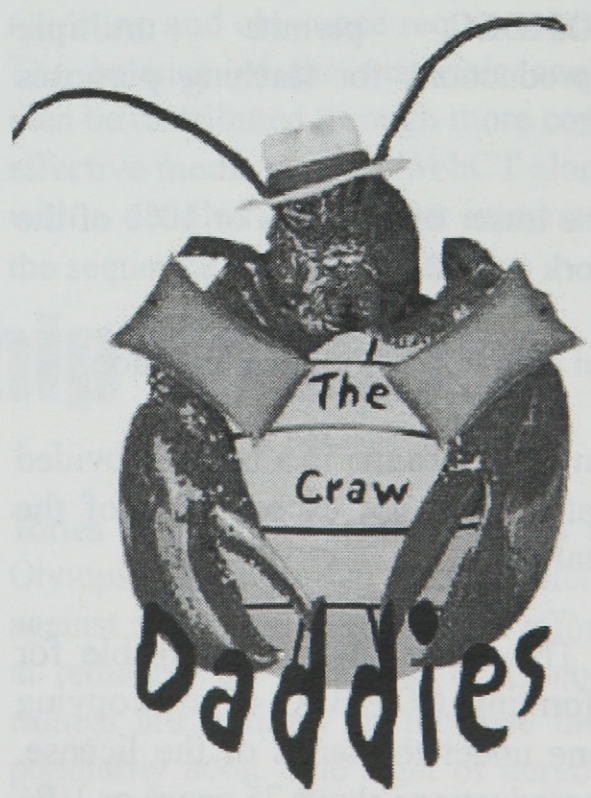
Lobster Season Around the Corner

by Coach C. (also known as Neil Horner, Law II)

Fear not, furry friends, the crawdads are still flipping. After many weeks of Quid pages devoid of any talk of crustaceans (except for our cousin Bubba, the 22 lb. lobster whose death in Maine last month we continue to lament), the crawdads were back in action on March 12. And what a day it was.

With Crawdad Philper chasing beaver tails, Crawdad Shemie lost at sea and Crawdad Murdoch foraging in the winter forest, we knew we would have to step up for our final regular season battle. Fortunately, Crawdadette Rabinovitch decided she'd had enough child's play and tore the house down with a stunning 12-point performance, scoring all of our points in a convincing 12-6 victory against some team with a cherry-picking goal suck. The Crawdaddies came together in an unprecedented display of talent, teamwork and exuberance, with calls for a team cheer briefly surfacing before being dismissed by the under-committed coaching staff.

Crawdad Cruess put on an earth shattering performance in net, and (once play shifted to the shallow end!) Crawdad Mann was quick to flex his claws between the pipes with an excellent flurry of saves, passes and dives. Crawdad Sandler was characteristically well dressed, Crawdad Parr was just gorgeous. Tune in for playoff game number 1 on April 2.



Responding to Course Pack Concerns

by Toby Moneit (Law IV) and Catherine Walsh (Associate Dean (Academic))

In response to the concerns expressed by students over course pack costs, members of the LSA Council and the Associate Dean (Academic) prepared a draft revision of the guidelines for instructors on the preparation and delivery of course materials. Professor Wendy Adams also provided valuable input. Comments on the draft and additional suggestions are welcomed. Please send your ideas to Toby Moneit at toby.moneit@mail.mcgill.ca or to the Associate Dean (Academic) at catherine.walsh@mcgill.ca .

Preparation and Delivery of Course Materials - Guidelines

Materials protected by Copyright

In Québec, reproduction rights for materials protected by copyright are administered through a collective known as COPIBEC (formerly the Union des écrivaines et écrivains québécois). The general licence agreement between the University and COPIBEC permits multiple reproductions for teaching purposes of:

-the lesser of 25 pages or 10% of the work copied;

-an entire article in a compilation;

-an entire chapter in a book, provided that it does not exceed 20% of the total work.

The University is responsible for informing COPIBEC of all copying done under the terms of the license. Reproductions above 25 pages or 10% of the work require express additional authorization through COPIBEC. Instructors who wish to reproduce their own teaching materials must therefore report this to the University. This is done by filling out the form entitled "Registration of Photocopies for Books and Periodicals". Where the instructor wishes to make copies that exceed the licence limits, the instructor must complete the form entitled "Request for Authorization to Photocopy."

Instructors can avoid the reporting and clearance burden by using H.D. Eastman Systems Inc. (281-5510). Eastman is the printer accredited by the University to prepare course packs and handle copyright permissions for instructors. Eastman charges a $0.09 per page fee to cover the costs associated with production, copyright clearance, and distribution; the royalties that are not covered by the COPIBEC general licence are additional to this cost.

Not all sources are covered by the COPIBEC agreement in which event permission must be obtained from, and royalties paid to, the copyright owner directly. If in doubt, visit the COPIBEC website (www.copibec.qc.ca) or contact McGill Printing Services (398-6300).

Exceptions to Copyright Reporting and Clearance Requirements

Multiple copies of texts not protected by copyright or protected by the instructor's own copyright are, of course, permitted.

Judicial decisions in and of themselves can be copied without having to obtain permission or pay royalties. In CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, the Court ruled that the headnotes, case summary, topical index and compilation of reported judicial decisions are all original works in which copyright subsists. However, when disentangled from the rest of the report the reasons are not covered by copyright. Therefore it is not copyright infringement to reproduce only the judicial reasons.

Works subject to copyright may be in the public domain because the copyright owner has given copyright of the work to the public. For example, the Government of Canada permits anyone to copy federal laws, statutes, and judicial decisions (except for headnotes / abstracts / summaries) without obtaining permission and without paying royalties (see Reproduction of Federal Law Order, P.C. 1996-1995, December 19, 1996, SI/97-5). This authorization is subject to the obligation to ensure the accuracy of the copy and to avoid holding out the copy to be an official version of the law, statute, or judicial decision. Some provinces and territories have adopted a similar policy while others may require advance consent and/or the payment of royalties or impose other restrictions. Information on each jurisdiction's copyright policy is typically published on its statute web site.

Under the terms of the current CanLII user licence, the reproduction and distribution of documents published on the CanLII web site is free-of-charge and does not require CanLII consent. However, this is ▸

subject to numerous exceptions and qualifications. For example, the reproduction of documents that would result in hiding the fact that they originate from the CanLII Web site is strictly prohibited, be it by framing, by re-use of CanLII search mechanisms or any other means. Reproduction must be done in a manner that preserves the integrity of the CanLII document as published online and all CanLII editorial inserts must be removed prior to re-use. The Entry pages for some CanLII copyright owners may impose additional or more restrictive conditions including requirements to obtain advance clearance and/or pay royalties. Consequently, instructors should read carefully the terms of the CanLII web site user licence to ensure they are in compliance before themselves reproducing documents from that source for teaching purposes.

Cost-Effectiveness

The Eastman course packs used in the Faculty of Law are lengthier than in other University departments and correspondingly more expensive. To a considerable extent, this is unavoidable. The reading expected of law students generally exceeds the norm in other academic studies.

Nonetheless, the cost of course packs can be contained in a variety of ways. When preparing a course pack, instructors are asked to bear in mind the following considerations:

-Remaining within the terms of the University's general licence avoids the extra costs incurred when Eastman must obtain advance authorization from COPIBEC or contact individual copyright owners;

-Careful editing and presentation can significantly reduce the length of course packs since students pay the same per page fee regardless of layout, formatting or page size.

-Once a satisfactory first version is produced, successive changes should ideally be made only in response to new legal developments (or prior teaching disasters).

-When adding significant new materials, consider whether a corresponding reduction can be made in the existing version of the course pack. If the additional material is slight (as it ideally will be), consider producing a separate supplement so that students can purchase used copies of the previous year's course pack.

-Where the materials that make up a course pack can be readily consulted directly by students without overtaxing library or other Faculty resources, provide full citations so that individual students can "opt out" of purchasing the printed course pack.

-For materials that are primarily intended as recommended "further reading," consider giving citations only or placing the reading on library reserve.

-Instructors newly assigned to a course should consider using course packs developed by previous instructors. If the new instructor has a different view on the structure or sequencing of readings, this can usually be accommodated by developing a different outline.

-Investigate the extent to which instructors' resources can be combined, for example, by developing common course packs for sectioned courses or using a common pool of student assistants to work on the editing and formatting stages of the preparation process.

-Consider using Eastman's services only for course materials protected by copyright or subject to the COPIBEC reporting and clearance requirements. The balance of the materials could then be distributed through more cost-effective media such as WebCT along with a detailed outline that integrates the sequence of reading. ■

Belinda Stronach's Leadership Roadtrip

by John Burnett (Law II)

Montrealers were treated to an odd spectacle recently. The federal Conservatives dropped by to hold a national policy convention. As opportunities to prop-up support in key electoral areas and promote party ideas, the Tories ideally hoped to repackage themselves in seat-rich Quebec. But with the exception of Brian Mulroney, the Tories haven't had much luck doing this since the days of Louis Riel.

Many Tories roaming the streets of Montreal were out of step with this diverse city. A gathering of federal Tories is about as natural here as an Olympic Stadium fan club. Policies against same-sex marriage and efforts at reducing the influence of Quebec ridings are unlikely to increase their popularity soon. The sight of nervous name-tag wearing delegates lost at the seedy St. Laurent / Ste. Catherine ▸

intersection late at night is a different story. Nevertheless, one Tory didn't look so out of place. Potential leadership hopeful Belinda Stronach demonstrated that Liberals shouldn't be complacent about future Tory prospects in Quebec or in urban Canada.

Stronach's convention hospitality suite Friday night embracing Montreal's cosmopolitan identity was in marked departure from those of her would-be competitors. Hospitality suites can position and promote future leadership candidates among grassroots members. Her potential opponents, such as M.P. Jim Prentice, held suites in the Queen Elizabeth hotel, whose large exterior English-only sign confronts René Lévesque Boulevard. A stuffy crowd discussed tax cuts tucked away high above the city. Stronach held her suite at the swank new Hotel Godin near Montreal's trendy club district.

Stronach demonstrated that she could break stereotypical images of Conservatives that have stalled her party's support among urban and youth voters. There was a live performance by Tom Cochrane, DJs playing hit tunes, glowing blue martinis, and lots of hype. Young local hipsters might have mistakenly waited in the line along with former Ontario Health Minister Tony Clement for a chance to get in.

Looking around the room, it was hard not to think an underground leadership campaign was already in full swing. The crowd was a gathering of many different constituencies. Former Reformers such as Preston Manning mixed with "Red Tories" such as John Tory. Youth were dancing with senior party members from urban and rural areas. The swarmed hostess worked the room along with deputy leader Peter MacKay. In contrast, a delegate prominently wearing Stephen Harper buttons was pressed so close to the walls that he was probably having memories of old high school dances.

Some Liberals in the audience were taken aback by the surprising event. Rumours pegged the official price tag upwards of $86,000. Equally striking, was the mix of professionalism and sophisticated urban style unseen in most Canadian political events. All promoting an M.P. who bucked the majority of her party by speaking out in favour of the proposed same-sex marriage legislation.

Despite all this, Liberals need not fret at Conservatives attracting critical new Quebec or urban voters at present. Policies designed to support major Quebec employers such as Bombardier were defeated. Other ideas popular in Quebec, such as the rejection of Ballistic Missile Defence, and the implementation of the Kyoto Protocol were to be subject to future review. These positions will only reinforce unfavourable perceptions of the Conservative party among Quebec and urban voters.

However, Belinda Stronach demonstrates a willingness to move outside the traditional Conservative box. She still needs to improve her linguistic abilities to connect directly with francophone voters before success in Quebec might be found. Yet Liberals would be wise to watch out for her moving the Tories into future untraditional territory. Despite Stephen Harper's leadership endorsement at the convention, it may be sooner than one might think. ■

Bye-bye Quid Novi

MS Pal April 14/05 "finally finished!"

by Mariam S. Pal (Law III)

If all goes according to plan, and I hope it does, I will be writing my last exam on April 26 and then I'll be finished law school. It sounds like a cliché but the three years have gone by very fast. One of the things I've enjoyed during the last year has been writing regularly for the Quid. Of course it helps that the Quidmeisters have published everything I've submitted! Many people, including those whom I never thought knew my name, have come up to me and told me that they read my articles and liked them. I thought that was really nice of all of you, although I was disappointed that nobody asked me to autograph one. Sniff! I take pleasure in writing and it's been great to have an opportunity to make a modest contribution to the faculty by doing so.

For my last article, I'm going to do what I really have tried to resist doing in my writing for the Quid all year and that is to complain. I've been saving up for three years now and have fine tuned and ruthlessly pared down a larger list to only ten. But before that let me just say that there are many good things about McGill Law and in my mind the good far outweighs the bad. Over three years here I've had many an interesting conversation with lots of fellow students as well as with faculty members and other staff. I learned a lot and had a good break from the working world. My vocabulary has expanded in a most ▸

impressive manner as have my googling skills. I have a battered CCQ and have written a factum and countless papers. I can even spell "estoppel".

In the tradition of David Letterman, let me frame my final griping into a top 10 list. I will call it "Mariam's Top 10 Gripes About McGill Law School". Here goes…

1. **Dirty Smelly Bathrooms**. While I have noticed those new supersized toilet paper rolls (at least in the women's bathrooms), soap dispensers and the occasional roll of paper towels, I do wonder if it would be asking too much that the bathrooms be cleaned more regularly. Honestly, the women's bathroom on the fourth floor of the library is starting to smell. I used to live in developing countries so my tolerance is pretty high but this is getting ridiculous.

2. **People who talk on their cell phones in the library**. They call it a library for a reason, stupid.

3. **People who eat noisy crunchy foods in the library**. Argh.

4. **People who eat noisy crunchy foods sitting next to me in class**. Double argh. In first year somebody once went through an entire bag of those mini carrots sitting next to me in class. Healthy snacks are nice but boy oh boy that was hard on my ears.

5. **People who leave their garbage all over the place** -- in classrooms, downstairs, in the computer lab and worst of all, in the library. Triple argh.

6. **Tiny tiny tiny *teensie* lockers**. They are pathetic and nobody uses them. Enough said. Happily this year I squatted on a big one and was not evicted.

7. **Cold classrooms with lousy wireless access**. At least if I have to suffer through the cold I should be able to surf eBay in boring classes.

8. **Snooty fellow students** who never say hello and walk around with their noses in the air. A very small minority I'm happy to say but they do irritate me. Loosen up, say hello, smile!

9. **Stupid giveaways from law firms**. What a pile of junk. Who needs it?

10. **People who complain in the Quid**. I rest my case.

Good luck to you all on your exams and finishing your papers. Have a good summer. Eat your vegetables. ■

The MLIC Need You!

by Geoff Conrad (Law II)

That annual rite of spring is upon us. No, the Stanley Cup Playoffs have not risen from the dead. Rather, the McGill Legal Information Clinic will soon be seeking volunteers to staff its phones for the summer months. For those students who will be spending the summer in Montreal, the MLIC is a great place to whittle away a couple of hours a week while doing something worthwhile in the community.

The McGill Legal Information Clinic has been operating for over 25 years. Staffed and run by McGill law students, the Clinic provides free legal information, in English and in French, to the population of Quebec, including McGill students. It also provides an excellent opportunity for students who have been drowning in 10 volume coursepacks all year to get a little practical experience while honing some of the skills they were supposed to pick up in class.

Located in the Shatner building on lower campus, the Clinic is open Monday to Friday. While typical inquiries often relate to family or landlord/tenant law, among other areas, volunteering at the clinic means you never know what you're going to encounter next. The experience is certainly never boring and often gives you a chance to tackle interesting legal issues that aren't touched in class. It also allows you to gain a little perspective by showing you how the law works on the ground and how it impacts people in everyday situations. On top of it all, considering how rewarding the experience can be, volunteering at the MLIC won't take up a lot of your time. Volunteers are required to work only one shift per week of two or three hours.

Now that you're sold on volunteering at the great community organization that is the McGill Legal Information Clinic, the big question is: how? Simply stay tuned. The incoming team of directors will be collecting names and e-mail addresses of interested students before the end of the semester. Although the MLIC will be closed during exams, it will reopen for the summer in the second week of May. A training session for all new volunteers will take place on Saturday, May 7th. In the meantime, if you have any pressing questions about the clinic or on how to become a volunteer, feel free to send an e-mail to geoffrey.conrad@mail.mcgill.ca. ■

Terry Schiavo Should Be Euthanized

by Matthew Keen (Law II)

Terry Schiavo should be allowed to die. And I don't mean permitted to starve to death, I mean euthanasia. If it is permissible to withhold care which will necessarily result in her death, then out of sheer decency she should be accorded a dignified death. That would mean proactive efforts to end her life by her doctors with her husband at her side. I have no time for the status quo slippery slope state of the law, and believe that the institutional mechanisms required by medical ethics would adequately protect society from any excessive respect for personal dignity.

To quickly lay out the context, she has been in a "persistent vegetative state" for ten years. Despite appearances, she is brain dead. Her husband proved she would not have wanted to be kept alive in that state, and hence the Florida courts sanctioned removing her feeding tube. Last week, the federal government passed a bill allowing the federal court to assume jurisdiction of her case. It has just rejected an emergency injunction to reinsert the tube, now under appeal.

Aside from crass political gain, Republican lawmakers' motivations have been to save her life ostensibly because every human life has value, no matter what. Yet that does preclude believing that the value of life and inherent dignity are inextricably linked, such that personal autonomy must be respected. To borrow the words of Justice Cory in Rodriguez v. B.C., the innate dignity of human existence necessarily protects dying as an integral part of living. Dying is the final act in the drama of life, and it is an affront to human dignity for the law to enforce a dreadful death.

If we allow someone to refuse treatment, and if we allow a spouse to speak for them, we do so out of respect for who they are and who they were. We respect their choices because we respect their dignity. Limiting the cause of Terry's death to starvation betrays the principles which ground removing her feeding tube in the first place. There is no moral difference between administering a lethal dose of morphine and removing the tube, but there is less dignity in death by starvation at an uncertain time. ■

The Case of The Bard de la Mer continued...

Consider the case of Gabriel Pedersen. He was drunk, and he did a very bad thing. What would Shakespeare make of him? One might look for instances of drunkenness in Shakespeare, but this does not really yield an applicable result - drunkenness is a much different phenomenon in the early twenty-first century than it was in the bard's imaginary world. What is a lawyer to do, then, but reason by analogy - drunkenness is arguably analogous to madness, and those who are mad are not held responsible for their actions by Shakespeare. The underlying principle is that of [in]capacity. Shakespeare recognized that we each have a duty - we must act, and we must regard the Other with care. This duty is triggered by the individual's ineluctable embeddedness in and indebtedness to the collective conditions of social life - it is neither a stretch nor trite to say that Shakespeare was our first modern sociologist. One's accountability to this principle, however, is measured (and sometimes mitigated) by one's capacity to act response-ably (to adopt the phraseology of Manderson J.). Shakespeare was too much of a realist to demand from people that which they are incapable of giving.

Shakespeare is not so accommodating, however. Modern madness may indicate incapacity, but Shakespearean madness is not so simple either to identify (was Hamlet insane, or ingenious? the debate rages on with little hope of resolution) or interpret, because in Shakespeare, madness does not simply come from out of the blue (or after a few leisurely beers). Madness means something. It is a symptom, and as such, an indication of something other than itself, something to which individual responsibility may attach.[3] Madness is not the end of the story, but rather only the beginning.

CONCLUSION:

The process, then, of making law out of the works of Shakespeare is a process of engaging Shakespeare in a difficult dialogue not only about the facts instant in any given case, but about the very possibility and nature of law and its relationship to our lives. Yes, Shakespeare speaks to us still, but we are by no means guaranteed to like what he has to say, which is of course all the more reason to listen.

NOTES:

1 For more information about the Shakespeare Moot Project and its history, see www.mcgill.ca/shakespearemoot/

2 The reasons of the learned judges will be prepared within approximately six months.

3 With great deference to the Court, I nonetheless maintain that the principle of incapacity remains the most cogent argument for Gabriel's exculpation, if exculpated he be. The principle of conscientious response-ability triggered by the need of the Other and measured against the capacity of the individual to reflect and to act is not before the law in a vague kind of casuistic, theological sense but is, rather, the very foundation of law and collective life. In the case at bar, Gabriel was rendered incapable of reflecting and acting response-ably by (1) his involuntary inebriation and (2) the unjust provocation offered by Jean. ■

Call for Quid Volunteers

Many of us will be leaving next year, so the time has come to choose our successors.

Contact us at quid.law@mcgill.ca no later than April 5th if you are interested in one of the following positions. Tell us who you are, what you've done, which position you are seeking, how great you think the Quid is, etc.

Editors-in-Chief
Duties: Organises managing, editing, layout and printing of the Quid; harasses the LSA exec whenever the scanner breaks down; has total control over the Quid's exclusive basement suite and gets to pick on Law Journal members at will.
Time commitment: Unlimited potential! 4-10 hours a week is required to prepare every issue.
The perfect candidate: Is familiar with publishing (Quark) and imaging (PSP) software; is fluent in French and English; is somewhat masochistic, and has an attraction for unpaid, non-credited and thankless jobs (or is a previous LSA member).

Assistant Editors-in-Chief
Duties: Coordinates layout, and supervises layout editors.
Time commitment: 2-6 hours every other week.
The perfect candidate: Is familiar with publishing (Quark) and imaging (PSP) software; enjoys chasing yellow weird-looking bugs around the office and chasing down hard-to-schedule (but not yellow or weird looking) layout editors; nit-picky, detail-oriented eye an asset.

Layout Editor
Duties: Does the layout for the Quid every week; has to live with the Assistant Editor-in-Chief's mood swings.
Time commitment: 2-4 hours every other week.
The perfect candidate: Is familiar or willing to learn with publishing (Quark) and imaging (PSP) software; likes spending hours in front of a flickering screen in an overly heated basement...we like to think of it as extremely cozy.

Managing Editors
Duties: Communicates with potential advertisers, and organises all communications with firms.
Time commitment: 2 hours weekly, with rush periods of 5-10 hours.
The perfect candidate: Is organized; is bilingual; knows how to use a calculator and/or Excel; has an ability to write formal yet not overly pompous letters; enjoys having angry messages left on his/her answering machine.

Associate Editors (1-3)
Duties: Proof-reads articles sent to the Quid.
Time commitment: 2 hours weekly, in a specific time-frame.
The perfect candidate: Has an excellent grasp of English and/or French; can resist the urge of inserting profanities when he/she disagrees with what he/she is reading; can't live without knowing in advance what will be in next week's Quid.

Web Editor
Duties: Improves and maintains the Quid's web site (www.law.mcgill.ca/quid).
Time commitment: 1-3 hours every other week (depending on the number of candidates).
The perfect candidate: Is familiar with web editing; takes pleasure in resetting an SSH password over and over again.

Other positions (TBD)
We welcome "official collaborators" to cover news and events at and around the Faculty, and any people who want to participate in some capacity in the exalted publication that is the Quid

L'initiative personnelle est garante du progrès collectif. Proposez-nous votre projet!

Professor Blackett's Report: One Big Leap Forward, But Several Small Steps Backward?

by John Haffner (Law II)

For those of you who missed it, the issue of grades and rankings was a big subject in our faculty last year. There was a palpable student mood of discontent with the current evaluation system, culminating in a petition, signed by several hundred students, to replace the current marks and ranking regime with a simple 'pass-fail-distinction' system with no rankings. Students continued to express their concerns even after the spring semester was over, with more than 80 students responding to Professor Blackett's e-mail questionnaire last May. Professor Blackett's newly released "Report on Student Evaluation" is the latest sally in this dialogue, and her recommendations are important because they could be adopted by Faculty Council.

Professor Blackett concedes many of the most important arguments that were made by students last year, and the report is very welcome for the vision of legal pedagogy it affirms. Nevertheless there are some tensions and perhaps contradictions in how her recommendations are meant to serve those laudable principles.

Professor Blackett acknowledges, with refreshing candour, that 100% final exams "are quite limited measures of student learning, even of hallmark legal skills." She therefore recommends the repeal of a bizarre faculty regulation that actually requires at least sixty percent of the assessment in first-year courses (if not all required courses, on another reading) to be based on a final written exam.

The repeal of the requirement is welcome, but it is not enough. By the time students discover whether they have any natural talent for speed exams in January of first year, the next chance they have to practice this narrow skill is on the final exams, which quickly become the most important factor in applications to prestigious law firms, clerkships, exchanges, and many other opportunities. Although Professor Blackett acknowledges the unfairness of this system, she falls short of suggesting that the faculty be required to offer multiple learning opportunities in first-year, citing cost concerns. But if I had been given the choice between paying more on my first-year tuition to have multiple learning and evaluation opportunities or to suffer through the frustrating disconnect between learning and evaluation over eight months, I would gladly have paid more. I'll bet a lot of students would feel the same way.

In some other respects Professor Blackett admirably dispenses with hierarchy for hierarchy's sake, recommending, for example, that the overall ranking of students be abolished. It is disappointing, therefore, when she then offers recommendations that would only serve to exacerbate competition and instrumental behaviour among students.

Most dramatically, Professor Blackett is unhappy with the fact that 70% of students in the faculty graduate with at least 'Distinction,' and recommends, in future, that this laurel should only go to the top 35%, with 'Great Distinction' only to the top 20%. But what is the pedagogical basis for these cut-offs? As any economist would point out, scarcity promotes rent-seeking behaviour. If the level of competition is already a distraction, imagine how students would react to the prospect of a marks-based regime with fewer accolades of distinction!

Professor Blackett then compounds the threat by also recommending that the marks of B+ and C+ be omitted, so the revised grading system would only include A, A-, B, B-, C, and F. Professor Blackett argues that B+ and C+ "cause the greatest potential for promoting arbitrary distinctions," but she gives no evidence for why pluses are worse than minuses. Moreover when we consider that students will now be fighting to get to the top 35% of the class, instead of taking Bs as consolation in an unexpectedly competitive environment, most students will be clamouring for as many A- marks as possible.

In short, it seems obvious that by eliminating B+ and limiting distinction to the top 35%, student life would become even more harried. Would extra-curricular life suffer? Perhaps in anticipation of this likelihood, Professor Blackett also proposes to require students to do at least one form of for-credit community service activity before they can obtain Distinction or Great Distinction. But not only would this recommendation send the wrong message as to why students should participate in a human rights internship or a legal clinic, it also raises the spectre of an ugly type of student interaction. With limited space in each of the approved for-credit community service activities, students with higher marks who are pursuing the activity for purely instrumental reasons could ask for priority over genuinely committed students with lower marks. Is this really the behaviour the faculty wants to encourage?

Professor Blackett does suggest, in the alternative, that the faculty consider a mandatory pro bono option. But there is a larger context here that she overlooks: if the faculty is finding that students are not doing enough outside of class, the problem cannot be with the students who are admitted, since McGill favours students with a record of community service. The reason more students do not do much more than study is simple: the workload is excessive and the competition fostered by the faculty is perverse.

When I first started martial arts I was impressed when I heard of a school that required its students to do 1,000 jumping jacks - until I realized that the very best martial artists do not waste time on analogical endurance training, instead focusing on the small number of muscle memory skills they need to excel in their arts. McGill has a lot of courses that require 1,000 jumping jacks, and one senses that McGill faculty members face an informal peer pressure that prevents them from designing courses with lighter, more precise workloads. Thus the larger solution to encouraging more extra-curricular involvement is to ask whether it is really necessary, for example, to have a 500+ page casebook for a two-credit course.

A more efficient learning process could be developed by reverse engineering from the checklists used in final exams to identify the 30-40 core principles that students should know for each course. More time could be spent applying those core principles in a variety of ways, with the result that most students, not just the best students, would achieve a much higher level of competence (as an ancillary benefit, there would also be more room for exploration outside the positive law). Professor Blackett endorses the idea that the faculty work to ensure "all students can attain a level of mastery in their legal studies," and in several places she affirms the excellence of McGill law students. At this point, I'm confused: if we want all of McGill's very capable students to achieve "a level of mastery," why would we want to deny some of those students the conferral of distinction for the sake of an arbitrary numerical cut-off?

Professor Blackett cautions against any evaluation solution based on "elitism" - a charged word. I don't have the space to answer this caution properly, other than to say two things. First, if we substitute the word "excellence" for "elitism," much of the pejorative connotation goes away. And second, it is disingenuous to suggest that McGill Law does not seek out and reward excellence: just as our students are already the minority survivors of an elitist admission process, most of our professors have been gold medalists, clerks, or enjoyed finishing school at prestigious graduate institutions (usually, some combination of these things). Surely the best way for our faculty to help our students thrive in the world is to ensure that every student learns, develops and is rewarded to the fullest extent possible. Not everyone will excel, but given more opportunities for development, many more eventually will, and if they do, we will have a better law school.

In our articles last year Jason MacLean and I argued that changes to the evaluation system can only be meaningfully considered as part of a much broader, strategic discussion of where we want our faculty to go. Professor Blackett no doubt agrees. But many critical issues that are only treated in passing, or not at all, in her report need to be made quite explicit so students and faculty together can have a frank discussion of the choices we need to make. We need to talk about the connection between funding and educational quality. We need to consider how to rebalance the faculty incentives between teaching and research - it is no secret that these core professorial activities are scandalously and unjustifiably out of whack in favour of one to the detriment of the other. Finally, we need to consider the kind of pedagogy that the trans-systemic programme demands, including the use of plural assessment vehicles (on this last point, watch for Professor Macdonald and Jason MacLean's article on legal education in the special issue of the McGill Law Journal dedicated to trans-systemia.

Alas, we are almost out of time for this year. Although the Curriculum Committee had Professor Blackett's report at the beginning of this term, Associate Dean Walsh only released it to students on March 17th and required our comments back before March 24th. It is quite unfair that students were given less than a week to respond on a matter that is so important to us and that was the culmination of six months of work by Professor Blackett. And so we are left with the Quid, once again, as the best venue for the student side of the student-faculty dialogue. When Faculty Council meets in April, I hope that Professor Blackett's colleagues will pay attention to her affirmation of important pedagogical principles, and resist some of her counterproductive recommendations. ■